

# Public Investors Arbitration Bar Association

July 7, 2005

**VIA FACSIMILE**

Karen Kupersmith  
New York Stock Exchange  
Arbitration Department  
20 Broad Street, 5th Floor  
New York, New York 10005

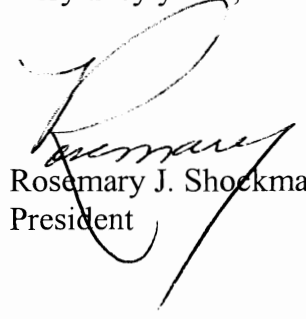
Re: Discovery Guide

Dear Karen:

Enclosed are our recommendations for a discovery guide.  
Please feel free to call Chuck Austin or me to discuss these.

We appreciate the opportunity to provide you with our input.

Very truly yours,

  
Rosemary J. Shockman  
President

RJS:dlr  
Enclosure

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President

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Vice-President/  
President-Elect

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**DOCUMENTS TO BE PRODUCED BY FIRM/ASSOCIATED PERSON  
IN CUSTOMER v. FIRM/ASSOCIATED PERSON DISPUTES**

**INSTRUCTIONS**

A. In the event the Firm does not maintain paper copies of requested documents, but the data that was contained on such document is stored electronically or otherwise, it must produce a readable printout of such data and any codes or keys necessary to understand the information produced. At the request of the party-seeking discovery, the data shall be produced on paper or in an electronic format which is readily downloadable and sortable through commercially available software.

B. Unless the context clearly requires a contrary construction, the documents requested shall be understood to include those required to be generated and maintained under the rules of the SEC (including without limitation SEC Rules 17a-3 and 4), NASD and NYSE.

C. The title that the Firm gives to a particular requested document is not controlling. In the event that the Firm maintains data of the kind typically contained in a requested document or maintains a document containing substantially similar data, such document or data must be produced.

D. In the event manuals or policies are requested, in its response the Firm is required to provide a list all such manuals and policies it maintains which pertain to the conduct or claims at issue in the statement of claim and the dates they were in effect.

**LIST 1**

**Documents to Be Produced By Firm/Associated Person(s) in All Cases**

- 1) The account record information for the customer as well as all agreements with the customer, including, but not limited to, account opening documents, cash, margin and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.
- 2) All correspondence between the customer and Firm/Associated Person relating to the transaction(s) at issue. Unless separately requested, confirmation slips and monthly statements need not be produced.
- 3) All documents concerning the customer's employment status, financial status, annual income, net worth, investment objectives, insurance and risk tolerance.
- 4) All documents evidencing any investment or trading strategies utilized or recommended in customer's account, including, but not limited to, options programs, and any supervisory review of said strategies.

**List 1 (cont.)**

- 5) All notes by the Firm/Associated Person, including entries in any diary or calendar, relating to the customer and/or the customer's accounts.
- 6) All recordings and notes of telephone calls or conversations about the customer's accounts that occurred between the Firm/Associated Person(s) and the customer (and any person purporting to act on behalf of the customer) and/or between the Firm and Associated Person.
- 7) All documents, not otherwise covered by the foregoing Requests, reflecting communications which relate to the customer(s) and the customer's account(s) which took place:
  - a) between and among employees and agents of the Firm;
  - b) between the Firm and the customer(s); and
  - c) between the Firm and third persons, including any governmental or self-regulatory entity.
- 8) All Forms RE-3, U-4, and U-5 and Disclosure Reporting pages, including all amendments thereto, for the Associated Person, all customer complaints identified in such forms, and all customer complaints alleging conduct of a similar nature to that alleged in the Statement of Claim against the Associated Person.
- 9) All sections of the Firm's manuals and any updates thereto during the relevant time related to the claims alleged in the Statement of Claim, including separate or supplemental manuals governing the duties and responsibilities of the Associated Person and supervisors, any bulletins (or similar notices) issued by the Firm, and the entire table of contents and index to each such Manual.
- 10) All analyses and reconciliations of the customer's accounts prepared during the time period at issue, including, without limitation, those relating to examinations of the customer's accounts.
- 11) All exception reports, supervisory activity reviews, activity concentration reports, active account runs and similar documents produced to review for unusual activity in customer accounts in which customer's account is referenced or listed.
- 12) All documents received by Respondent by subpoena or document request directed to third parties.

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### LIST 3

#### **Documents to Be Produced by Firm/Associated Person in Claims of Excessive Tradings and Other Improper Sales Practices**

- 1) The record of all compensation, monetary and non-monetary including, but not limited to, monthly commission runs for the Associated Person, listing the securities traded, dates traded, solicited or unsolicited nature, and the gross and net commission from each trade, for all years in which the conduct alleged in the Statement of Claim transpired. The firm may redact names of customers who are not parties to this claim, but may not otherwise redact or delete information. Sufficient information must be provided to determine which accounts are those of the Associated Person and his or her related accounts.
- 2) For all transactions at issue in the Statement of Claim, the memorandum of each order or instruction given, as well as documentation showing the compensation, gross or net, to the Associated Person for each such transaction. In the event accounts at issue are the subject of a wrap fee or similar arrangement, a record showing compensation earned by period on the accounts.
- 3) A record of all agreements pertaining to the relationship between the Associated Person and the Firm, summarizing the Associated Person's compensation arrangement or plan with the Firm, including commission and concession schedules, bonus or incentive plans, schedules showing compensation received or to be received based upon volume, type of product, nature of trade, (agency v. principal) etc. and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation was determined.

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## **LIST 5**

### **Documents to Be Produced by Firm/Associated Person in Claims of Negligent Supervision/Failure to Supervise**

- 1) The record of all compensation, monetary and non-monetary including, but not limited to, monthly commission runs for the Associated Person, listing the securities traded, dates traded, solicited or unsolicited nature, and the gross and net commission from each trade, for all years in which the conduct alleged in the Statement of Claim transpired. The firm may redact names of customers who are not parties to this claim, but may not otherwise redact or delete information. Sufficient information must be provided to determine which accounts are those of the Associated Person and his or her related accounts.
- 2) All exception reports, supervisory activity reviews, activity concentration reports, active account runs and similar documents produced to review for unusual activity in customer relating to the Associated Person(s) and/or the customer's account(s) at issue.
- 3) Those portions of internal audit reports for the branch in which the customer maintained accounts that: (a) focused on the Associated Person(s) or the transactions at issue; and (b) were generated not earlier than two years before or not later than one year after the transactions at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the Statement of Claim.
- 4) All documents relating to all compliance interviews or meetings with the Associated Person(s) assigned to the customer's accounts at issue during the time period at issue.
- 5) Copies of any inquiries, charges or findings by any regulator (state, federal or self-regulatory organization) and the responses thereto by the Firm/Associated Person for alleged improper behavior similar to that alleged in the Statement of Claim.
- 6) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transactions at issue or that discussed alleged improper behavior in the branch against other individuals similar to the conduct alleged in the Statement of Claim.
- 7) All documents evidencing supervisory or managerial review of customer's account or trades therein.
- 8) All correspondence between the customer and Firm/Associated Person relating to the transaction(s) at issue bearing indications of managerial or supervisory review of such correspondence.

## **LIST 7**

### **Documents to be Produced By Firm/Associated Person in Claims of Misrepresentation and/or Omissions**

1) Copies of all materials prepared or used by the firm and/or Associated Person(s) and/or provided to the customer relating to the transactions or products at issue, including research reports, advertisements, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents.

## **LIST 9**

### **Documents to be Produced by Firm/Associated Persons in Claims of Negligence and/or Breach of Fiduciary Duty**

1) Copies of all materials prepared or used by the firm and/or Associated Person(s) and/or provided to the customer relating to the transactions or products at issue, including research reports, advertisements, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents.

## **LIST 11**

### **Documents to be Produced By Firm/Associated Persons In Claims of Unauthorized Trading**

- 1) For all transactions at issue in the Statement of Claim, the memorandum of each order or instruction given as well as documentation showing the compensation, gross and net, to the Associated Person for each such transaction.
- 2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.
- 4) Commission runs or other documents sufficient to show all trading by the Associated Person(s) in the security at issue for a period extending from ten trading days before and after each transaction the customer alleges was unauthorized. The firm/Associated person(s) may redact customer names but must disclose the security traded, dates traded, whether trades were solicited or unsolicited and gross and net commission from each trade.

## **LIST 13**

### **Documents to Be Produced By Firms/Associated Persons in Claims of Unsuitability**

- 1) Copies of all materials prepared or used by the firm and/or Associated Person(s) and/or provided to the customer relating to the transactions or products at issue, including research reports, advertisements, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents.
- 2) A record of all agreements pertaining to the relationship between the Associated Person and the Firm, summarizing the Associated Person's compensation arrangement or plan with the Firm, including commission and concession schedules, bonus or incentive plans, schedules showing compensation received or to be received based upon volume, type of product, nature of trade, (agency v. principal), etc. and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation was determined.
- 3) The record of all compensation, monetary and non-monetary, including, but not limited to, monthly commission runs for the Associated Person, listing the securities traded, dates traded, solicited or unsolicited nature, and the gross and net commission from each trade, for all years in which the conduct alleged in the Statement of Claim transpired. The firm may redact names of customers who are not parties to this claim, but may not otherwise redact or delete information. Sufficient information must be provided to determine which accounts are those of the Associated Person and his or her related accounts.
- 4) All documents evidencing communications between firm/Associated Person(s) and the customer relating to asset allocation, diversification, trading strategies and market conditions.